

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MICHAEL E. CLARK,

Plaintiff(s),

v.

ADRIAN GUERRERO,

Defendant(s).

Case No. 2:09-CV-141 JCM (PAL)

ORDER

Presently before the court is plaintiff's motion for default judgment against defendant Adrian Guerrero. (Doc. # 149).

On September 17, 2014, this court entered an order to show cause against defendant. (Doc. # 144). Defendant has not responded to this order in over a year and has not filed any other documents since that date. This court ordered default (doc. #147), and the clerk entered default against defendant. (Doc. #148).

Default judgment is appropriate "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise. . ." Fed. R. Civ. P. 55(a). Federal Rule of Civil Procedure 55(b)(2) provides that "a court may enter a default judgment after the party seeking default applies to the clerk of the court as required by subsection (a) of this rule." Fed. R. Civ. P. 55(b)(2).

Obtaining a default judgment entails two steps: "first, the party seeking a default judgment must file a motion for entry of default with the clerk of a district court by demonstrating that the opposing party has failed to answer or otherwise respond to the complaint, and, second, once the clerk has entered a default, the moving party may then seek entry of a default judgment against the defaulting party." *See UMG Recordings, Inc. v. Stewart*, 461 F. Supp. 2d 837, 840 (S.D. Ill. 2006).

1 The decision to enter a default judgment lies within the discretion of the trial court. *Aldabe*  
2 *v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir. 1980). In determining whether to grant a default  
3 judgment, the trial court should consider the seven factors articulated in *Eitel v. McCool*, 782 F.2d  
4 1470, 1471-72 (9th Cir. 1986). These factors are: (1) the possibility of prejudice to plaintiff, (2)  
5 the merits of the claims, (3) the sufficiency of the complaint, (4) the amount of money at stake, (5)  
6 the possibility of a dispute concerning material facts, (6) whether default was due to excusable  
7 neglect, and (7) the policy favoring a decision on the merits. *Id.* In applying these *Eitel* factors,  
8 “the factual allegations of the complaint, except those relating to the amount of damages, will be  
9 taken as true.” *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977); *see* Fed. R. Civ.  
10 P. 8(d).

11 Plaintiff has properly complied with Rule 55. Defendant has not filed a response to this  
12 court’s order to show cause. (Doc. #144). After considering the *Eitel* factors, the court finds it  
13 appropriate to enter default judgment against the defendant.

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff’s motion for  
16 default judgment (doc. # 149) be, and the same hereby, is GRANTED.

17 IT IS FURTHER ORDERED, ADJUDGED AND DECRRD that plaintiff shall prepare  
18 and file an appropriate judgment for the court’s signature.

19 DATED December 14, 2015.

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21 UNITED STATES DISTRICT JUDGE  
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